

# House File 814 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 747)  
(SUCCESSOR TO HSB 57)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act modifying provisions applicable to facilities qualifying  
2 for wind energy production and renewable energy tax credits  
3 and including effective and retroactive applicability  
4 provisions.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 1649HZ 83  
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1 1 Section 1. Section 476B.1, subsection 4, paragraph d, Code  
1 2 2009, is amended to read as follows:  
1 3 d. (1) For applications filed on or after March 1, 2008,  
1 4 consists of one or more wind turbines connected to a common  
1 5 gathering line which have a combined nameplate capacity of no  
1 6 less than two megawatts and no more than thirty megawatts.  
1 7 (2) For applications filed on or after July 1, 2009, by a  
1 8 private college or university, community college, institution  
1 9 under the control of the state board of regents, public or  
1 10 accredited nonpublic elementary and secondary school, or  
1 11 public hospital as defined in section 249J.3, for the  
1 12 applicant's own use of qualified electricity, consists of wind  
1 13 turbines with a combined nameplate capacity of three-fourths  
1 14 of a megawatt or greater.  
1 15 Sec. 2. Section 476B.4, Code 2009, is amended to read as  
1 16 follows:  
1 17 476B.4 LIMITATIONS LIMITATION.  
1 18 ~~1. The wind energy production tax credit shall not be~~  
~~1 19 allowed for any kilowatt-hour of electricity produced on wind~~  
~~1 20 energy conversion property for which the owner has claimed or~~  
~~1 21 otherwise received for that property the benefit of special~~  
~~1 22 valuation under section 427B.26 or section 441.21, subsection~~  
~~1 23 8, or the exemption from retail sales tax under section~~  
~~1 24 422.45, subsection 48, Code Supplement 2003, or section 423.3,~~  
~~1 25 subsection 54, as applicable.~~  
1 26 ~~2.~~ The wind energy production tax credit shall not be  
1 27 allowed for any kilowatt-hour of electricity that is sold to a  
1 28 related person. For ~~purpose~~ purposes of this ~~subsection~~  
1 29 section, persons shall be treated as related to each other if  
1 30 such persons would be treated as a single employer under the  
1 31 regulations prescribed under section 52(b) of the Internal  
1 32 Revenue Code. In the case of a corporation that is a member  
1 33 of an affiliated group of corporations filing a consolidated  
1 34 return, such corporation shall be treated as selling  
1 35 electricity to an unrelated person if such electricity is sold  
2 1 to such a person by another member of such group.  
2 2 Sec. 3. Section 476B.5, subsection 4, Code 2009, is  
2 3 amended to read as follows:  
2 4 4. The maximum amount of nameplate generating capacity of  
2 5 all qualified facilities the board may find eligible under  
2 6 this chapter shall not exceed ~~four~~ one hundred fifty megawatts  
2 7 of nameplate generating capacity.  
2 8 Sec. 4. Section 476B.6, subsection 1, Code 2009, is  
2 9 amended to read as follows:  
2 10 1. a. If a city or a county in which a qualified facility  
2 11 is located has enacted an ordinance under section 427B.26 and  
2 12 an owner has filed for and received special valuation pursuant  
2 13 to that ordinance, the owner is not required to obtain  
2 14 approval from the city council or county board of supervisors  
2 15 to apply for the wind energy production tax credit pursuant to

2 16 subsection 2.

2 17 a. ~~b.~~ (1) To be eligible to receive the wind energy  
2 18 production tax credit, if neither a city nor a county in which  
2 19 a qualified facility is located has enacted an ordinance under  
2 20 section 427B.26, or a qualified facility is not eligible for  
2 21 special valuation pursuant to an ordinance adopted by a city  
2 22 or a county under section 427B.26, the owner must first

2 23 receive approval of the applicable city council or county  
2 24 board of supervisors of the city or county in which the  
2 25 qualified facility is located in order to be eligible to  
2 26 receive the wind energy production tax credit. The  
2 27 application for approval may be submitted prior to  
2 28 commencement of the construction of the qualified facility but  
2 29 shall be submitted no later than the close of the owner's  
2 30 first taxable year for which the credit is to be applied for.  
2 31 The application must contain the owner's name and address, the  
2 32 address of the qualified facility, and the dates of the  
2 33 owner's first and last taxable years for which the credit will  
2 34 be applied for. Within forty-five days of the receipt of the  
2 35 application for approval, the city council or county board of  
3 1 supervisors, as applicable, shall either approve or disapprove  
3 2 the application. After the forty-five-day limit time period  
3 3 has expired, the application is deemed to be approved.

3 4 b. (2) Upon approval of the application submitted  
3 5 pursuant to subparagraph (1), the owner may apply for the tax  
3 6 credit as provided in subsection 2. In addition, approval of  
3 7 the application submitted pursuant to subparagraph (1) is  
3 8 acceptance by the applicant for the assessment of the  
3 9 qualified facility for property tax purposes for a period of  
3 10 twelve years and approval by the city council or county board  
3 11 of supervisors, as applicable, for the payment of the property  
3 12 taxes levied on the qualified property to the state. For  
3 13 purposes of property taxation, the qualified facility  
3 14 receiving approval of an application submitted pursuant to  
3 15 subparagraph (1) shall be centrally assessed and shall be  
3 16 exempt from any replacement tax under section 437A.6 for the  
3 17 period during which the facility is subject to property  
3 18 taxation. The property taxes to be paid to the state are  
3 19 those property taxes which make up the consolidated tax levied  
3 20 on the qualified facility and which are due and payable in the  
3 21 twelve-year period beginning with the first fiscal year  
3 22 beginning on or after the end of the owner's first taxable  
3 23 year for which the credit is applied for. Upon approval of  
3 24 the application, the city council or county board of  
3 25 supervisors, as applicable, shall notify the county treasurer  
3 26 to state designate on the tax statement which lists the taxes  
3 27 on the qualified facility that the amount of the property  
3 28 taxes shall be paid to the department. Payment of the  
3 29 designated property taxes to the department shall be in the  
3 30 same manner as required for the payment of regular property  
3 31 taxes and failure to pay designated property taxes to the  
3 32 department shall be treated the same as failure to pay  
3 33 property taxes to the county treasurer.

3 34 c. Once the owner of the qualified facility receives  
3 35 approval under paragraph "a" "b", subsequent approval under  
4 1 paragraph "a" "b" is not required for the same qualified  
4 2 facility for subsequent taxable years.

4 3 Sec. 5. Section 476C.3, subsection 3, Code 2009, is  
4 4 amended to read as follows:

4 5 3. A facility that is not operational within thirty months  
4 6 after issuance of an approval for the facility by the board  
4 7 shall cease to be an eligible renewable energy facility.  
4 8 However, a wind energy conversion facility that is approved as  
4 9 eligible under this section but is not operational within  
4 10 eighteen months due to the unavailability of necessary  
4 11 equipment shall be granted an additional ~~twelve~~ twenty-four  
4 12 months to become operational. A facility that is granted and  
4 13 thereafter loses approval may reapply to the board for a new  
4 14 determination.

4 15 Sec. 6. Section 476C.3, subsection 4, Code 2009, is  
4 16 amended to read as follows:

4 17 4. The maximum amount of nameplate generating capacity of  
4 18 all wind energy conversion facilities the board may find  
4 19 eligible under this chapter shall not exceed ~~one~~ three hundred  
4 20 ~~eighty~~ thirty megawatts of nameplate generating capacity. The  
4 21 maximum amount of energy production capacity equivalent of all  
4 22 other facilities the board may find eligible under this  
4 23 chapter shall not exceed a combined output of twenty megawatts  
4 24 of nameplate generating capacity and one hundred sixty-seven  
4 25 billion British thermal units of heat for a commercial  
4 26 purpose. Of the maximum amount of energy production capacity

4 27 equivalent of all other facilities found eligible under this  
4 28 chapter, fifty-five billion British thermal units of heat for  
4 29 a commercial purpose shall be reserved for an eligible  
4 30 facility that is a refuse conversion facility for processed,  
4 31 engineered fuel from a multicounty solid waste management  
4 32 planning area. The maximum amount of energy production  
4 33 capacity the board may find eligible for a single refuse  
4 34 conversion facility is fifty-five billion British thermal  
4 35 units of heat for a commercial purpose.

5 1 Sec. 7. REFUNDS. Refunds of taxes, interest, or penalties  
5 2 which may arise from claims resulting from the amendment of  
5 3 section 476B.4 in this Act, for the exemption of sales of wind  
5 4 energy conversion property as provided in section 423.3,  
5 5 subsection 54, occurring between January 1, 2008, and the  
5 6 effective date of this Act, shall be limited to one hundred  
5 7 thousand dollars in the aggregate and shall not be allowed  
5 8 unless refund claims are filed prior to October 1, 2009,  
5 9 notwithstanding any other provision of law. If the amount of  
5 10 claims totals more than one hundred thousand dollars in the  
5 11 aggregate, the department of revenue shall prorate the one  
5 12 hundred thousand dollars among all claimants in relation to  
5 13 the amounts of the claimants' valid claims. Claimants shall  
5 14 not be entitled to interest on any refunds.

5 15 Sec. 8. RENEWABLE ENERGY TAX CREDIT ELIGIBILITY STUDY.  
5 16 The utilities board of the utilities division of the  
5 17 department of commerce shall conduct a study to evaluate  
5 18 whether procedures applicable to eligible renewable energy  
5 19 facilities which have been approved for the renewable energy  
5 20 tax credit but are not yet operational pursuant to section  
5 21 476C.3, subsection 3, and eligible renewable energy facilities  
5 22 which have been placed on a waiting list for approval pursuant  
5 23 to section 476C.3, subsection 5, are in need of modification.  
5 24 The study shall include a survey of each facility which has  
5 25 been approved to determine the extent to which progress has  
5 26 been made toward achieving operational status. The study  
5 27 shall also include a survey of each facility which has been  
5 28 determined eligible and is awaiting approval, to ascertain  
5 29 whether the facility continues to seek approval and is  
5 30 committed to becoming operational once approval is obtained.  
5 31 Based on the results of the surveys, the board shall submit  
5 32 recommendations to the general assembly by January 1, 2010,  
5 33 regarding whether statutory or procedural modifications are  
5 34 necessary to ensure that facilities are being effectively and  
5 35 efficiently maintained in an approved or eligible status.

6 1 Sec. 9. EFFECTIVE AND APPLICABILITY DATES. The sections  
6 2 of this Act enacting section 476B.1, subsection 4, paragraph  
6 3 "d", subparagraph (1), and amending sections 476B.4 and  
6 4 476B.6, being deemed of immediate importance, take effect upon  
6 5 enactment and apply retroactively to January 1, 2008, for tax  
6 6 years beginning on or after that date.

#### 6 7 EXPLANATION

6 8 This bill modifies eligibility requirements applicable to  
6 9 the wind energy production tax credit established in Code  
6 10 chapter 476B and the renewable energy tax credit established  
6 11 in Code chapter 476C.

6 12 With regard to the wind energy production tax credit, the  
6 13 bill provides for a maximum combined nameplate capacity  
6 14 restriction of no more than 30 megawatts for applicants for  
6 15 the credit. The bill also adds to the definition of  
6 16 "qualified facility", for applications filed on or after July  
6 17 1, 2009, by a private college or university, community  
6 18 college, institution under the control of the state board of  
6 19 regents, a public or accredited nonpublic primary or secondary  
6 20 school, or public hospital as defined in Code section 249J.3,  
6 21 for the applicant's own use of qualified electricity a wind  
6 22 turbine with a combined nameplate capacity of three-fourths of  
6 23 a megawatt or greater.

6 24 The bill deletes a provision which had prevented  
6 25 eligibility for the wind energy production tax credit for any  
6 26 kilowatt-hour of electricity produced on wind energy  
6 27 conversion property for which the owner had claimed or  
6 28 received specified special property tax valuation or sales tax  
6 29 exemptions, thus preserving credit availability for owners  
6 30 having received special valuation or having claimed the sales  
6 31 tax exemptions. Because of the retroactivity of the  
6 32 elimination of the restriction of the receipt of the tax  
6 33 credit to those who have not received the sales tax exemption,  
6 34 a provision for refund of sales tax paid is included in the  
6 35 bill. These provisions and the provision regarding a maximum  
7 1 combined nameplate capacity restriction take effect upon  
7 2 enactment and apply retroactively to January 1, 2008, for tax

7 3 years beginning on or after that date.

7 4 The bill changes a provision specifying the maximum amount  
7 5 of nameplate generating capacity of all qualifying facilities  
7 6 under Code chapter 476B, currently at 450 megawatts of  
7 7 nameplate generating capacity, to 150 megawatts.

7 8 With regard to the renewable energy tax credit, the bill  
7 9 provides for an extension of time for a wind energy conversion  
7 10 facility to become operational following issuance of an  
7 11 approval from the current period of 12 additional months to 24  
7 12 additional months.

7 13 The bill changes a provision specifying the maximum amount  
7 14 of nameplate generating capacity for all eligible wind energy  
7 15 conversion facilities under Code chapter 476C, currently at  
7 16 180 megawatts of nameplate generating capacity, to 330  
7 17 megawatts.

7 18 Additionally, the bill directs the utilities board of the  
7 19 utilities division of the department of commerce to conduct a  
7 20 study to evaluate whether procedures applicable to eligible  
7 21 renewable energy facilities which have been approved for the  
7 22 renewable energy tax credit under Code chapter 476C but are  
7 23 not yet operational, and facilities which have been placed on  
7 24 a waiting list for approval, are in need of modification. The  
7 25 board is required to submit recommendations to the general  
7 26 assembly by January 1, 2010, regarding whether statutory or  
7 27 procedural modifications appear necessary.

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